

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ana Burcroff	Team: Team # 6	CCRB Case #: 200403075	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 02/23/2004 7:30 PM	Location of Incident: E. 165th Street & River Avenue	Precinct: 44	18 Mo. SOL 8/23/2005	EO SOL 8/23/2005	
Date/Time CV Reported Mon, 04/05/2004 9:03 AM	CV Reported At: CCRB	How CV Reported: Mail	Date/Time Received at CCRB Mon, 04/05/2004 9:03 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Robert Nugent	07494	920663	044 PCT
2. SGT Christophe McCormack	04729	895704	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Christophe McCormack	Abuse: Sgt. Christopher McCormack supervised the search of § 87(2)(b) and three unidentified individuals.	
B.SGT Christophe McCormack	Abuse: Sgt. Christopher McCormack supervised the search of the car in which § 87(2)(b) was an occupant.	
C.SGT Christophe McCormack	Abuse: Sgt. Christopher McCormack refused to provide his name and shield number to § 87(2)(b)	
D.POM Robert Nugent	Abuse: PO Robert Nugent refused to provide his name and shield number to § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

Synopsis

On February 23, 2004, § 87(2)(b) was in the Bronx, leaving § 87(2)(b) when he ran into an acquaintance named § 87(2)(b). § 87(2)(b) offered § 87(2)(b) a ride into Manhattan and § 87(2)(b) accepted. There were two male passengers in § 87(2)(b) vehicle, and § 87(2)(b) was not familiar with them. At 165th Street and River Ave, § 87(2)(b) pulled over his vehicle. Two plainclothes officers, PO Nugent and Sgt. McCormack, approached § 87(2)(b) vehicle and instructed everyone to step out. § 87(2)(b) alleged that PO Nugent and Sgt. McCormack instructed the passengers to provide ID, remove the contents of their pockets and place their hands on the roof (Allegation A). § 87(2)(b) and § 87(2)(b) two other passengers complied. PO Nugent and Sgt. McCormack asked the individuals if they had any drugs. One of § 87(2)(b) passengers informed the officers that he had something on him, but § 87(2)(b) did not hear what kind of paraphernalia it was. PO Nugent and Sgt. McCormack searched the vehicle (Allegation B), conferred momentarily and then handcuffed § 87(2)(b) placed him in their vehicle and transported him to the 44th Precinct. § 87(2)(b) found out at the front desk that he was being charged with possession of a crack pipe. § 87(2)(b) alleged that he asked Sgt. McCormack and PO Nugent to provide their names and shield numbers numerous times, and they failed to properly identify themselves (Allegations C and D). § 87(4-b), § 87(2)(g)

This complaint was not eligible for the mediation program because § 87(2)(b) was arrested. It was not possible to interview the driver, § 87(2)(b) or his two passengers because § 87(2)(b) did not have full names for these individuals or their contact information. § 87(2)(g)

Summary of Complaint

§ 87(2)(b) filed his complaint by mail (Encl. 4.a-d). His letter was received at the CCRB on April 5, 2004. § 87(2)(b) explained that he filed his complaint nearly two months late because he originally sent his letter to the wrong address. § 87(2)(g)

§ 87(2)(b) In his letter, § 87(2)(b) reported that he knew the driver of the vehicle “for a number of years,” however during his interview, § 87(2)(b) described the driver as an acquaintance and claimed not to have any contact information for him. In his letter, § 87(2)(b) stated that the driver stopped at E. 165th Street and River Ave to let out his passengers. However, in his interview statement, § 87(2)(b) stated that he did not know why the driver pulled over at that location. § 87(2)(b) wrote in his letter that one of the passengers informed the officers that he had a crack pipe, but during his interview, § 87(2)(b) claimed not to have heard what kind of paraphernalia the passenger had. § 87(2)(b) wrote the officers names as “Officer Nuget” and “Sergeant McColloch.” He included PO Nugent’s shield number in the letter, but not Sgt. McCormack’s.

§ 87(2)(b) provided his in-person statement at the CCRB on April 30, 2004 (Encl. 6.a-d). On February 23, 2004, § 87(2)(b) attended an evening § 87(2)(b) at Woodycrest Avenue and “one sixty-something street.” After the meeting, § 87(2)(b) ran into an acquaintance named § 87(2)(b) knows § 87(2)(b) as a “friend of a friend” and he did not know § 87(2)(b) last name or have contact information for § 87(2)(b) a black male, was driving a maroon Toyota Corolla and there were two other black male passengers in his car. § 87(2)(b) was planning on walking to his home in Manhattan over the Macombs Dam bridge. § 87(2)(b) offered § 87(2)(b) a ride into Manhattan. § 87(2)(b) accepted, and got in the backseat.

§ 87(2)(b) drove on 165th Street towards the bridge. At 165th Street between River Ave and Jerome Ave, § 87(2)(b) pulled his car to the side of the road. An unmarked police car, a black Impala, pulled up next to § 87(2)(b) car. § 87(2)(b) had not been paying attention, and he did not know why § 87(2)(b) stopped his car.

Two white male officers dressed in plainclothes, who § 87(2)(b) identified as PO Robert Nugent and Sgt. Christopher McCormack, exited the Impala and ordered everyone out of § 87(2)(b) car. § 87(2)(b) his

two friends, and § 87(2)(b) exited the vehicle. The officers stated to § 87(2)(b) that he ran a red light. The officers instructed the men to provide ID, empty their pockets, and put their hands on the roof. All four did as instructed. § 87(2)(b) put his wallet, some loose dollar bills, and a schedule for § 87(2)(b) on the roof. The officers ran a warrant check for all four individuals, and none had open warrants. PO Nugent, the more vocal of the two officers, asked the four men, "Do you have anything on you?" and asked if they had drugs or drug paraphernalia. One of § 87(2)(b) passengers informed the officers that he had something on him, but § 87(2)(b) did not hear what kind of paraphernalia it was.

The officers proceeded to search the four men. PO Nugent searched § 87(2)(b) asked why he was being stopped, and he said to PO Nugent, "I don't see your name" and requested his badge number. § 87(2)(b) asked PO Nugent and Sgt. McCormack for their names and shield numbers several times, including later at the 44th Precinct, and every time the officers responded, "Look at the police report."

PO Nugent and Sgt. McCormack searched the seats of § 87(2)(b) vehicle. Then, PO Nugent handcuffed § 87(2)(b). § 87(2)(b) asked why he was being arrested and PO Nugent stated, "You know. You lied to me." PO Nugent and Sgt. McCormack brought § 87(2)(b) into their RMP and transported him to the 44th Precinct.

PO Nugent brought § 87(2)(b) to the front desk and gave the desk sergeant a crack pipe, and stated that it belonged to § 87(2)(b). § 87(2)(b) had never seen a crack pipe before, and was shocked. He disputed the crack pipe, and stated that it did not belong to him.

§ 87(2)(b) learned Sgt. McCormack's name when Sgt. McCormack received a phone call, and § 87(2)(b) heard him state his name. § 87(2)(b) obtained PO Nugent's name from a female PAA.

Results of Investigation

Subject Officer Statements

PO Robert Nugent provided his statement to CCRB on May 18, 2004 (Encl. 8.a-b). On February 23, 2004, PO Nugent was assigned to 44th Precinct Conditions with Sgt. Christopher McCormack, and both were dressed in plainclothes. PO Nugent and Sgt. McCormack were assigned to an unmarked blue Impala.

At 7:30PM, PO Nugent and Sgt. McCormack were patrolling in their vehicle when they observed a car make a right on red at River Ave and 165th St. PO Nugent and Sgt. McCormack followed the car and ran the license plate in the mobile digital terminal (MDT). The MDT indicated that the license plate was registered to a different vehicle. The car parked at 165th St between Jerome Ave and River Ave and PO Nugent pulled up behind the car and stopped.

It was apparent that the passengers in the vehicle, four in total, did not realize that PO Nugent and Sgt. McCormack were parked behind them. The backseat passenger on the right side, § 87(2)(b) pulled out a crack pipe and started smoking from it. PO Nugent and Sgt. McCormack exited their vehicle and approached the driver's and passenger's sides respectively. PO Nugent and Sgt. McCormack identified themselves as police officers. § 87(2)(b) attempted to hide the crack pipe by placing it on the seat.

Sgt. McCormack ordered § 87(2)(b) to step out of the vehicle, placed him in handcuffs, and brought § 87(2)(b) to the rear of the car. § 87(2)(b) was physically compliant, but very loud, and he seemed embarrassed to have been caught smoking crack. PO Nugent and Sgt. McCormack instructed all of the passengers to step out. "To protect [their] own safety," PO Nugent and Sgt. McCormack frisked the pockets of the three passengers, but did not search their pockets. Sgt. McCormack searched § 87(2)(b)'s pockets, incident to lawful arrest.

With flashlights, PO Nugent and Sgt. McCormack conducted a visual search of the interior of the car, of the lunge-ible areas only. PO Nugent found § 87(2)(b)'s crack pipe on the backseat, and an empty crack baggie.

PO Nugent and Sgt. McCormack did not take any further enforcement action regarding the three passengers, and they transported § 87(2)(b) to the 44th Precinct station house. By the front desk, § 87(2)(b) demanded names and shield numbers from PO Nugent and Sgt. McCormack. PO Nugent and Sgt. McCormack both verbally stated their names and shield numbers, and informed § 87(2)(b) that the information would be on the court paperwork. PO Nugent additionally stated his name to § 87(2)(b) when he fingerprinted him and again when he took § 87(2)(b)'s arrest photo. Later on, § 87(2)(b) apologized to PO Nugent for acting the way that he did, admitted to being wrong, and said that he used to have a crack problem.

PO Nugent did not recall whether he and Sgt. McCormack prepared UF-250 Stop and Frisk Reports for the three unidentified passengers.

After six missed appointments, **Sgt. Christopher McCormack** provided his statement to CCRB on January 5, 2005 (Encl. 10.a-c). On February 23, 2004, Sgt. McCormack was assigned to 44th Precinct Conditions with PO Robert Nugent, and both were dressed in plainclothes. PO Nugent and Sgt. McCormack were assigned to an unmarked blue car, vehicle #820. PO Nugent was the vehicle operator and Sgt. McCormack was the recorder.

At approximately 7:30PM, PO Nugent drove northbound on River Avenue. PO Nugent observed a car traveling in the southbound lane make a right at a red light onto 165th Street. PO Nugent informed Sgt. McCormack that the car made a right on red, and then did a U-turn into the southbound lane and followed the car to 165th Street. While driving, PO Nugent conducted a check of the car's license plate. Sgt. McCormack did not recall whether PO Nugent checked the license plate in the mobile digital terminal, or whether he asked for a license check over the air. The license check determined that the license plate did not match the car. The car parked at 165th Street close to Jerome Avenue. PO Nugent conducted some additional checks to see if the car was stolen, and stopped the police vehicle behind the car to wait for the results.

From their vehicle, Sgt. McCormack and PO Nugent observed a male passenger in the backseat, later identified as § 87(2)(b) light a crack pipe and proceed to smoke crack. Sgt. McCormack readily identified the implement as a crack pipe and explained that when one smokes crack, the flame has to stay lit, unlike with tobacco products.

Shortly after the officers observed the male smoke crack, they received the results of the license check, which indicated that the car was not stolen. Sgt. McCormack and PO Nugent exited their vehicle to address the male who they observed smoke crack. Sgt. McCormack approached the passenger's side and PO Nugent approached the driver's side. There were four male individuals inside of the car, two in front and two in back.

Sgt. McCormack and PO Nugent approached the car with flashlights in their hands and turned on. There was some movement inside of the car as they approached. With the aid of a flashlight, Sgt. McCormack saw through the passenger side windows that all four passengers had open containers of beer and most of them held the containers between their legs. Sgt. McCormack did not recall whether the beer was in cans or bottles, or what kind of beer it was. The driver and front passenger rolled down their windows and acknowledged that they were drinking beer.

The officers asked all four individuals to step out of the car—Sgt. McCormack explained that for safety purposes he wanted everyone out so that he could see their hands. Sgt. McCormack asked the three who were not smoking crack to stand against a wall. PO Nugent remained near the car with § 87(2)(b). Sgt. McCormack asked the three unidentified passengers if they had any crack on them and they replied that they did not. Sgt. McCormack asked the individuals for ID and they provided identification. Sgt. McCormack denied frisking or searching the three unidentified passengers, and stated that PO Nugent did not conduct a frisk or search of these individuals either.

PO Nugent placed § 87(2)(b) in handcuffs without difficulty or assistance. § 87(2)(b) complained incessantly that he was in a union and his union would fire him if they found out about the crack. § 87(2)(b) did not dispute that he was smoking crack, or that the crack pipe was his. Sgt. McCormack believed that § 87(2)(b) complained because he was “looking for a break.” Sgt. McCormack believed that PO Nugent conducted a quick visual check of the interior of the car and located the crack pipe on the back seat, but he was not certain about this because his attention was focused on the three passengers, not on PO Nugent. Sgt. McCormack did not search the interior of the vehicle at any time.

Sgt. McCormack and PO Nugent did not have summons books, so PO Nugent called a sector car to respond to issue summonses to the three unidentified passengers. Sgt. McCormack did not recall whether PO Nugent asked for a sector car over the radio or on his cell phone. A sector car responded, however Sgt. McCormack did not recall which sector responded or who the officers were. Sgt. McCormack instructed the officers to issue desk appearance tickets for open container to all three individuals and a “B summons” for a moving violation to the driver.

PO Nugent and Sgt. McCormack placed § 87(2)(b) in their vehicle and drove to the 44th Precinct for arrest processing. At the front desk, § 87(2)(b) asked Sgt. McCormack and PO Nugent for their names. Sgt. McCormack stated to § 87(2)(b) that he was “Sergeant McCormack,” and that PO Nugent was “Officer Nugent, your arresting officer.” § 87(2)(b) asked Sgt. McCormack to write

down his name and PO Nugent's name. Sgt. McCormack informed § 87(2)(b) that PO Nugent's name would be written "all over" the court paperwork. Sgt. McCormack stayed at the desk to write the command log entry for § 87(2)(b)'s arrest, and PO Nugent lodged § 87(2)(b) in a holding cell. Sgt. McCormack did not believe that § 87(2)(b) asked him for his shield number, or asked PO Nugent for his shield number.

Inv. Burcroff asked Sgt. McCormack if he recalled the incident correctly, especially regarding the response of a sector car to the location. Sgt. McCormack maintained that a sector car responded to issue summonses, even after he was informed that PO Nugent and § 87(2)(b) did not state anything about a sector car responding to the incident.

Police Documents

Arrest Report

The arrest report narrative states that § 87(2)(b) was observed smoking crack cocaine from a crack pipe, and that the crack pipe was found during a search incident to lawful arrest (Encl. 13.a-b).

Warrant Check

MISD and New York State Police records indicate that a warrant check of § 87(2)(b) was performed at 5:00PM on February 23, 2004 (Encl. 15.a-b, 16.a-k). The print-out shows that Sgt. Edward Geary, 44th Precinct, was signed into the computer that was used to conduct the check.

Because § 87(2)(b) did not provide full names for the other passengers, it was not possible to request a warrant check for these individuals.

Communications

DAU conducted a search for Sgt. McCormack and PO Nugent requesting an additional unit to respond, and found no such radio communication (Encl. 17).

Roll Call

The 44th Precinct roll call for tour 3 of February 23, 2004 indicates that Sgt. McCormack is assigned to Conditions and PO Nugent is scheduled for court (Encl. 11.a-j).

CCRB History

§ 87(2)(b)

As of March 4, 2005, PO Nugent has been substantiated once for an incident that occurred in 2004, CCRB 200400893. The CCRB recommended charges, but the outcome is still pending (Encl. 3.a-b).

Sgt. McCormack has one substantiated CCRB investigations on his record, #200300663. The case, which involves numerous frisk and search allegations and a vehicle search allegation, was tried at DCT in October 2004. The findings are still pending as of March 4, 2005 (Encl. 2.a-c).

Criminal Conviction History

§ 87(2)(b) does not have any criminal convictions. For this incident, § 87(2)(b) pleaded guilty to disorderly conduct and paid a \$75 fine (Encl. 14.a-g).

Officer Identification

§ 87(2)(b) identified PO Nugent and Sgt. McCormack by name during his CCRB interview, and provided accurate physical descriptions.

Conclusions and Recommendations

Credibility

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Determination of Facts

On February 23, 2004, PO Nugent and Sgt. McCormack patrolled in an unmarked car and PO Nugent was the vehicle operator. PO Nugent stopped the police vehicle behind a car at 165th Street and River Ave, and PO Nugent and Sgt. McCormack exited their vehicle and approached the car. PO Nugent informed the driver § 87(2)(b) that he was observed running a red light. PO Nugent and Sgt. McCormack asked the driver and the passengers, four individuals in total, to step out, and asked the passengers if they had any drugs. Although the sequence is unknown, it is certain that PO Nugent and Sgt. McCormack conducted at least a frisk of the passengers' pockets and handcuffed a passenger from the back seat, § 87(2)(b). PO Nugent and Sgt. McCormack searched the lunge-ible areas of § 87(2)(b)'s vehicle and placed § 87(2)(b) in the backseat of the police vehicle. Sgt. McCormack and PO Nugent did not personally take any further enforcement actions towards the other unidentified passengers. Sgt. McCormack and PO Nugent transported § 87(2)(b) to the 44th Precinct. § 87(2)(b) asked Sgt. McCormack and PO Nugent to identify themselves multiple times. Sgt. McCormack and PO Nugent both informed § 87(2)(b) that their information would be on police paper work.

A. **Abuse of Authority: Sgt. Christopher McCormack supervised the search of § 87(2)(b) and three unidentified individuals.**

It is impossible to make a determination about allegation A without testimony from the driver § 87(2)(b) and the two others who remain unidentified. § 87(2)(b) made a very specific and plausible allegation that PO Nugent and Sgt. McCormack ordered him and the other passengers to remove the contents of their pockets and place the items on the roof of § 87(2)(b) car, effectively searching them. PO Nugent admitted to frisking the individuals, but denied searching them. Sgt. McCormack denied conducting a frisk or a search § 87(2)(g)

§ 87(2)(g)

B. **Abuse of Authority: Sgt. Christopher McCormack supervised the search of the car in which § 87(2)(b) was an occupant.**

Based on § 87(2)(b)'s testimony that a passenger in the car admitted to having drugs or drug paraphernalia in his possession, § 87(2)(g)

C. **Abuse of Authority: Sgt. Christopher McCormack refused to provide his name and shield number to § 87(2)(b)**

D. **Abuse of Authority: PO Robert Nugent refused to provide his name and shield number to § 87(2)(b)**

Although there is some dispute as to whether § 87(2)(b) asked PO Nugent and Sgt. McCormack for their names and shield numbers, or just their names, there is a consensus that § 87(2)(b) requested identifying information from the officer and sergeant numerous times. PO Nugent and Sgt. McCormack claimed that they verbally provided the requested information, and also informed § 87(2)(b) that their identifying information would be on the court paperwork. According to § 87(2)(b) PO Nugent and Sgt. McCormack said that their names and shield numbers would be on the "police report" and failed to verbally identify themselves. § 87(2)(b) reported that he identified the officers independently when he heard Sgt. McCormack answer the phone, and by asking a PAA for PO Nugent's name.

§ 87(2)(g)

E. **§ 87(4-b), § 87(2)(g)**

§ 87(4-b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: